

§ 1905.51 Finality for purposes of judicial review.

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by a hearing examiner which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

PART 1906—ADMINISTRATION WITNESSES AND DOCUMENTS IN PRIVATE LITIGATION [RESERVED]

PART 1908—CONSULTATION AGREEMENTS

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AUTHORITY: Secs. 7(c), 8, 21(d), Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 670) and Secretary of Labor's Order No. 6-96 (62 FR 111, January 2, 1997).

SOURCE: 49 FR 25094, June 19, 1984, unless otherwise noted.

§ 1908.1 Purpose and scope.

(a) This part contains requirements for Cooperative Agreements between states and the Federal Occupational Safety and Health Administration (OSHA) under sections 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) and section 21(d), the Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998 (which amends the Occupational Safety and Health Act,) under which OSHA will utilize state personnel to provide consultative services to employers. Priority in scheduling such consultation visits must be assigned to requests received from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request. Consultation programs operated under the authority of a state

plan approved under Section 18 of the Act (and funded under Section 23(g), rather than under a Cooperative Agreement) which provide consultative services to private sector employers, must be "at least as effective as" the section 21(d) Cooperative Agreement programs established by this part. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but off-site assistance may also be provided by telephone and correspondence and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific hazards in the workplace, and will provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified.

(b) Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although onsite consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect employees, and in certain instances will be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain OSHA